

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re REFCO CAPITAL MARKETS, LTD.
BROKERAGE CUSTOMER
SECURITIES LITIGATION

06 Civ. 643 (GEL)

VR GLOBAL PARTNERS, L.P., et al.,

Plaintiffs,

v.

07 Civ. 8686

PHILIP R. BENNETT, et al.,

Defendants.

CAPITAL MANAGEMENT SELECT
FUND, LTD., et al.,

Plaintiffs,

v.

07 Civ. 8688

PHILIP R. BENNETT, et al.,

Defendants.

**DECLARATION OF RICHARD A. ROSEN IN FURTHER SUPPORT OF THE
THL DEFENDANTS' MOTION TO DISMISS**

RICHARD A. ROSEN declares under penalty of perjury, pursuant to 28
U.S.C. § 1746, as follows:

1. I am admitted to practice before this Court and am a partner at Paul, Weiss, Rifkind, Wharton & Garrison LLP, attorneys for defendants Thomas H. Lee Partners, L.P., Thomas H. Lee Advisors LLC, THL Managers V, LLC, THL Equity Advisors V, LLP, Thomas H. Lee Equity Fund V, L.P., Thomas H. Lee Parallel Fund V, L.P., Thomas H. Lee Equity (Cayman) Fund V, L.P., Thomas H. Lee Investors Limited Partnership, 1997 Thomas H. Lee Nominee Trust, Thomas H. Lee, David V. Harkins,

Scott L. Jaeckel, and Scott A. Schoen. I respectfully submit this declaration in further support of the THL Defendants' Motion to Dismiss.

2. Attached hereto as Exhibit A are two true and correct copies of the Refco Capital Markets, Ltd. ("RCM") margin agreement. The first copy is one executed by Investment & Development Finance Corp. ("IDF"), a plaintiff in *Capital Management Select Fund, Ltd., et al. v. Bennett, et al.* (the "Capital Action"), and filed by IDF in its proof of claim in *In re Refco, Inc.*, No. 05-60006 (Bankr. S.D.N.Y.). The second copy is one executed by IDC Financial, S.A. ("IDC"), also a plaintiff in the Capital Action, and was an exhibit in a trial in *In re Refco, Inc.*, No. 05-60006 (Bankr. S.D.N.Y.) before Judge Robert D. Drain that began on February 14, 2006 and ended on March 14, 2006 (the "Trial").

3. Attached hereto as Exhibit B are two true and correct copies of the RCM tri-party agreement. The first copy is one that was executed by IDF and filed by IDF in its proof of claim in *In re Refco, Inc.*, No. 05-60006 (Bankr. S.D.N.Y.). The second copy is one that was executed by IDC and was an exhibit in the Trial.

4. Attached hereto as Exhibit C is a true and correct copy of an excerpt of the transcript of the February 14, 2006 hearing before Judge Robert D. Drain in *In re Refco, Inc.*, No. 05-60006 (Bankr. S.D.N.Y.).

5. Attached hereto as Exhibit D is a true and correct copy of an excerpt of Bank of International Settlements, *Triennial Bank Survey, Foreign Exchange and Derivatives Market Activity in 2004* 15 (March 2005).

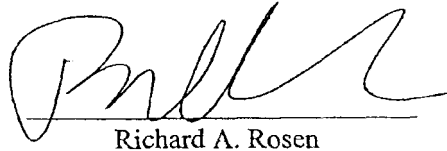
6. Attached hereto as Exhibit E is a true and correct copy of A. Bernheim, *Repeal of the Ten Commandments: The Impact on the Offshore Hedge Fund*

Administration Industry, http://www.hedgefundnews.com/news_n_info/article_detail.php?id=260.

7. Attached hereto as Exhibit F is a true and correct copy of the Supplemental Risk Disclosure of Refco Capital Markets, LLC, available at <http://www.refcodocket.com/CriticalDocs/SupplementalRiskDisclosure.pdf>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 9, 2008 at New York, New York.



Richard A. Rosen